

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: H2/26/97

# A Bill

ACT 772 OF 1997  
HOUSE BILL 1814

5 By: Representatives Ferrell, Malone, and Faris  
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## For An Act To Be Entitled

9 "AN ACT TO CREATE A SPECIAL FUND OF THE ARKANSAS  
10 DEVELOPMENT FINANCE AUTHORITY TO BE ADMINISTERED BY THE  
11 ARKANSAS SOIL AND WATER CONSERVATION COMMISSION AND THE  
12 ARKANSAS DEPARTMENT OF HEALTH TO BE KNOWN AS THE 'SAFE  
13 DRINKING WATER FUND'; DECLARING THE MONEYS IN THE FUND TO  
14 BE CASH FUNDS; AUTHORIZING CERTAIN MONEYS IN THE FUND TO  
15 BE LOANED FOR WATER SYSTEM PROJECTS, TO BE PLEDGED AND  
16 USED TO PAY DEBT SERVICE AND COSTS RELATED TO BONDS ISSUED  
17 BY THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY OR THE  
18 ARKANSAS SOIL AND WATER CONSERVATION COMMISSION, TO PAY  
19 ADMINISTRATIVE EXPENSES OF THE ARKANSAS SOIL AND WATER  
20 CONSERVATION COMMISSION, AND FOR OTHER PURPOSES RELATED TO  
21 WATER SYSTEMS; AUTHORIZING THE ARKANSAS SOIL AND WATER  
22 CONSERVATION COMMISSION TO CHARGE FEES TO BORROWERS IN  
23 CONNECTION WITH THE DRINKING WATER STATE REVOLVING LOAN  
24 FUND PROGRAM; AUTHORIZING THE ARKANSAS DEVELOPMENT FINANCE  
25 AUTHORITY TO COLLECT SUCH FEES FROM BORROWERS ON BEHALF OF  
26 THE ARKANSAS SOIL AND WATER CONSERVATION COMMISSION;  
27 ALLOWING THE WITHHOLDING AND TRANSFER OF TURNBACK FUNDS OF  
28 AN ENTITY WITH OVERDUE LOANS AND FEES DUE THE SAFE  
29 DRINKING WATER FUND; PRESCRIBING OTHER MATTERS RELATING  
30 THERETO; AND DECLARING AN EMERGENCY."

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## Subtitle

32 "PERTAINING TO THE CREATION OF THE SAFE  
33 DRINKING WATER FUND"  
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36 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. As used in this act, unless the context otherwise requires:

(a) "Administrative Account" means the "Drinking Water State Administrative Account" established by this act within the Fund.

(b) "Authority" shall mean the Arkansas Development Finance Authority, or any successor agency of the state.

(c) "Commission" shall mean the Arkansas Soil and Water Conservation Commission, or any successor agency or commission of the state.

(d) "Department" shall mean the Arkansas Department of Health or any successor agency of the state.

(e) "Fund" shall mean the "Safe Drinking Water Fund" established by the act.

(f) "Owner" shall mean the owner or prospective owner of a Water System, excluding any federal agencies.

(g) "Revolving Loan Account" shall mean the "Drinking Water State Revolving Loan Fund Account" established by this act within the Fund.

(h) "Safe Drinking Water Act" shall mean the federal Safe Drinking Water Act Amendments of 1996 and its subsequent amendments or successor provisions.

(i) "Set Aside Account" shall mean the "Drinking Water State Set Aside Account" established by this act within the Fund.

(j) "State" shall mean the State of Arkansas.

(k) "State Grants Account" shall mean the "Drinking Water State Grants Account" established by this act within the Fund.

(l) "Water System" shall mean a public water system within the meaning of the Safe Drinking Water Act, which system may be owned publicly or privately, and which shall include particularly, without limitation, distribution and transmission lines, storage, production, pumping and treatment facilities, impoundments, reservoirs, wells, source water protection, land, rights of way and conservation easements.

SECTION 2. (a) There is hereby established on the books of the authority a special restricted fund to be known as the "Safe Drinking Water Fund" which shall be maintained in perpetuity by the authority and administered by the commission and the department as hereinafter set forth, for the purposes stated herein. Grants from the federal government or its

1 agencies allotted to the state for capitalization of the Fund, State matching  
2 grants where required, proceeds of bonds issued by the authority or the  
3 commission for such purpose, and loan principal, interest, and premiums shall  
4 be deposited directly in the Fund.

5 (b) Moneys in the Fund shall be expended in a manner consistent with  
6 the terms and conditions of applicable federal and state capitalization grants  
7 and may be used:

8 (1) To provide loans for the planning, design, acquisition,  
9 construction, expansion, equipping and/or rehabilitation of Water Systems or  
10 parts thereof;

11 (2) Subject to the provisions of subsections (c), (d) and (e) of  
12 this Section and subject to the approval of the commission, to secure the  
13 payment of the principal of and premium, if any, and interest on, and to pay  
14 costs incurred in connection with, bonds issued by the authority, if the net  
15 proceeds of such bonds are deposited into the Revolving Loan Account;

16 (3) To pay the principal of and premium, if any, and interest on,  
17 and to pay costs incurred in connection with, bonds issued by the commission,  
18 if the net proceeds of such bonds are deposited in the Revolving Loan Account.

19 (4) To purchase bonds, notes, or other evidences of indebtedness  
20 issued by Owners to finance or refinance Water Systems or parts thereof;

21 (5) To fund other Water System programs which the federal or  
22 state government may allow in the future through grants;

23 (6) To fund the administrative expenses of the commission  
24 relating to the responsibilities and requirements of this act and the Safe  
25 Drinking Water Act;

26 (7) To fund technical assistance for Water Systems, assistance to  
27 state programs such as the public water system supervisory, source water  
28 protection, capacity development and operation certification programs; or

29 (8) To provide for any other expenditures consistent with  
30 applicable federal and state law.

31 (c) There is hereby established a separate account within the Fund,  
32 designated the "Drinking Water State Administrative Account", into which  
33 moneys provided by the federal government pursuant to the Safe Drinking Water  
34 Act, for the purpose of administering programs funded by the Safe Drinking  
35 Water Act, and fees pursuant to Sections 6 and 7 of this act, shall be  
36 deposited. Moneys in the Administrative Account may be expended by the

1 commission for administrative costs of programs funded by the Safe Drinking  
2 Water Act. Moneys in the Administrative Account shall never be pledged to the  
3 payment of, or as security for, any bonds issued by the authority or the  
4 commission.

5 (d) There is hereby established a separate account within the Fund,  
6 designated the "Drinking Water State Set Aside Account," into which moneys  
7 provided by the federal government pursuant to the Safe Drinking Water Act for  
8 the purpose of funding costs of technical assistance to Water Systems,  
9 assistance to state programs such as the public water system supervisory,  
10 source water protection, capacity development and operation certification and  
11 for other purposes permitted by the Safe Drinking Water Act to be paid from  
12 set asides shall be deposited. Moneys in the Set Aside Account may be  
13 expended for the purpose of funding the cost of federal assistance to Water  
14 Systems, assistance to state programs, such as public water system  
15 supervisory, source water protection, capacity development and operation  
16 certification programs, and other purposes permitted by the Safe Drinking  
17 Water Act to be paid from set asides. Moneys in the Set Aside Account shall  
18 never be pledged to the payment of, or as security for, any bonds issued by  
19 the authority or the commission.

20 (e) There is hereby established a separate account within the Fund,  
21 designated the "Drinking Water State Grants Account," into which moneys  
22 appropriated by the state for deposit into the Fund shall be deposited.  
23 Moneys in the State Grants Account may be expended for the same purposes as  
24 other moneys in the Fund, provided, however, that moneys in the State Grants  
25 Account shall never be pledged to the payment of, or as security for, any  
26 bonds issued by the authority or the commission.

27 (f) There is hereby established a separate account within the Fund,  
28 designated the "Drinking Water State Revolving Loan Fund Account," into which  
29 moneys provided by (i) the federal government pursuant to the Safe Drinking  
30 Water Act, (ii) proceeds of bonds issued by the commission and the authority,  
31 and (iii) other amounts, excluding state appropriations, received pursuant to  
32 Section 5 of this act, for the purpose of providing financial assistance to  
33 Owners in connection with the planning, design, acquisition, construction,  
34 expansion, equipping and/or rehabilitation of a Water System, or parts  
35 thereof. Moneys in the Revolving Loan Account may also be expended for the  
36 purposes set forth in subsections (b)(1), (2), (3), (4), (5) and (8) of this

1 Section 2.

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3 (g) With the approval of the commission, the authority may establish  
4 and maintain additional accounts within the Fund or subaccounts within the  
5 accounts established hereby.

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7 SECTION 3. (a) Except for the Set Aside Account, the Fund shall be  
8 administered by the commission, as agent for the authority, and the commission  
9 is authorized to establish procedures and adopt such regulations as may be  
10 required to administer the Fund and programs financed in whole or in part with  
11 moneys in the Fund in accordance with federal or state law providing for Water  
12 Systems, including particularly, without limitation, the federal Safe Drinking  
13 Water Act, and to enter into contracts and other agreements in connection with  
14 the operation of the Fund, including, but not limited to, contracts and  
15 agreements with federal agencies, Owners, the authority, the department and  
16 other parties to the extent necessary or convenient for the implementation of  
17 the Fund program. Notwithstanding the above, the department shall have the  
18 authority to establish a priority list for Water Systems, the Owners of which  
19 will receive financial assistance from moneys in the Revolving Loan Account,  
20 and the department and the commission shall jointly execute capitalization  
21 grant agreements, on behalf of the state, in order to obtain funds under the  
22 Safe Drinking Water Act. The department shall also have the authority to  
23 carry out oversight and related activities (other than financial  
24 administration) with respect to financial assistance.

25 (b) Acting as agent for the authority, the commission shall maintain  
26 full authority for the operation of the Fund, except the Set Aside Account, in  
27 accordance with applicable federal and state law, including withdrawals  
28 necessary to achieve the intended purposes of the Fund.

29 (c) To the extent that funds received from the federal government under  
30 the Safe Drinking Water Act and non appropriated state matches do not  
31 designate the account into which such funds shall be deposited, the funds  
32 shall be deposited into the accounts as designated by the commission.

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34 SECTION 4. (a) The Set Aside Account shall be administered by the  
35 department, as agent for the authority, and the department is authorized to  
36 establish procedures and adopt such regulations as may be required to

1 administer the Set Aside Account and programs financed in whole or in part  
2 with moneys in the Set Aside Account in accordance with federal or state law  
3 providing for Water Systems, including, without limitation, the federal Safe  
4 Drinking Water Act and to enter into contracts and other agreements in  
5 connection with the operation of the Set Aside Account, including, but not  
6 limited to, contracts and agreements with federal agencies, the authority, the  
7 commission and other parties to the extent necessary or convenient for the  
8 implementation of the fund program.

9       (b) Acting as agent for the authority, the department shall maintain  
10 full authority for the operation of the Set Aside Account, in accordance with  
11 applicable federal and state law, including withdrawals necessary to achieve  
12 the intended purposes of the Set Aside Account.

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14       SECTION 5. (a) The authority is authorized to accept grants for the use  
15 of the Fund from any state or federal agencies, municipalities, corporations,  
16 foundations, individual donees, or authorities, specifically including, but  
17 not limited to, appropriations from the State Treasury as heretofore or  
18 hereafter provided.

19       (b) All moneys received by the authority under and pursuant to the  
20 provisions of this subchapter shall be deposited as and when received in the  
21 Fund, except as otherwise specifically provided by federal or state law.

22       (c)(1) Except for moneys hereafter deposited in or paid to the  
23 authority for deposit in the State Grants Account, all moneys now or hereafter  
24 received for, deposited in, or paid to the authority for deposit in the Fund  
25 are specifically declared to be cash funds, restricted in their use, and which  
26 shall not be deposited in the State Treasury or deemed to be a part of the  
27 State Treasury for the purposes of Arkansas Constitution, Article 5, § 29;  
28 Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20;  
29 or any other constitutional or statutory provisions, but shall be held and  
30 applied by the authority solely for the uses set forth in this act.

31       (2) Interest and other moneys received from the investment of  
32 moneys, the purchase of bonds, notes, or other evidences of indebtedness  
33 issued by Owners, or the making of loans with moneys in the Fund, including in  
34 each case moneys in the State Grants Account, are declared to be cash funds,  
35 restricted in their use, and shall not be deposited in the State Treasury, but  
36 shall be held and applied by the authority solely for the uses set forth in

1 this act.

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3 SECTION 6. (a) The commission is hereby authorized to establish fees  
4 for its technical and administrative services in connection with acquisition,  
5 construction, expansion, equipping or rehabilitation of Water Systems, or  
6 parts thereof, financed in whole or in part with moneys in the Fund.

7 (b) Such fees shall be payable in any one (1) or more of the following  
8 methods:

9 (1) From the proceeds of bonds, notes, or other evidences of  
10 indebtedness of an Owner purchased from moneys in the Fund;

11 (2) From the proceeds of bonds issued by the authority or the  
12 commission in connection with the Fund; or

13 (3) From periodic payments due on the bonds, notes, or other  
14 evidences of indebtedness of an Owner purchased with moneys in the Fund.

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16 SECTION 7. The authority is hereby authorized, if requested by the  
17 commission, to collect the fees from the Owners receiving financial assistance  
18 from the Fund and to deposit the fees into the Administrative Account within  
19 five (5) days after each periodic payment is made.

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21 SECTION 8. Notwithstanding the provisions of Arkansas Code §§ 19-6-108  
22 and 19-6-601, grants to the state received by the Treasurer of State from the  
23 federal government for deposit into the Fund are declared to be cash funds  
24 restricted in their use and dedicated and are to be used solely as authorized  
25 in this act.

26 (a) The cash funds, when received by the Treasurer of State, shall not  
27 be deposited or deemed to be a part of the State Treasury for the purposes of  
28 Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, §  
29 12; Arkansas Constitution, Amendment 20; or any other constitutional or  
30 statutory provision.

31 (b)(1) The Treasurer of State shall pay the cash funds to the authority  
32 for deposit in the Fund to be used for the purposes authorized by this act.

33 (2) Such federal grants transferred directly to the authority are  
34 declared to be cash funds restricted in their use and dedicated and to be used  
35 solely as authorized in this act.

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1        SECTION 9. With the approval of the commission, the authority is  
2 authorized to use the moneys in the Revolving Loan Account and the assets  
3 acquired with moneys in the Revolving Loan Account to secure the payment of  
4 the principal of and premium, if any, and interest on bonds issued by the  
5 authority if the net proceeds of such bonds are deposited into the Revolving  
6 Loan Account.

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8        SECTION 10. (a) Should any city, town, county or political subdivision  
9 receiving general revenue turnback funds, as defined in the Revenue  
10 Stabilization Law, Arkansas Code §§ 19-5-101 et seq., fail, neglect or refuse  
11 to pay any installment of principal, interest or financing fee for a period of  
12 more than ninety (90) days past the due date in accordance with the written  
13 instrument for the repayment of its bonds, notes, or other evidences of  
14 indebtedness purchased with moneys in the Revolving Loan Account, the  
15 commission may, after notification to the city, town, county, or political  
16 subdivision, certify to the Treasurer of State, Auditor of State, and the  
17 Chief Fiscal Officer of the State, the name of the city, town, county or  
18 political subdivision, the amount of deficiencies ninety (90) days or more  
19 past due.

20        (b) Upon certification, the Treasurer of State, the Auditor of State,  
21 and the Chief Fiscal Officer of the State are hereby directed to withhold from  
22 the city's, town's, county's or other political subdivision's share of general  
23 revenue turnback, as such share is defined in the Revenue Stabilization Law,  
24 Arkansas Code §§ 19-5-101 et seq., as the same may be amended from time to  
25 time, the amount so certified as due and to transfer such amount to the  
26 Revolving Loan Account and the Administrative Account as follows: amounts  
27 withheld as fees shall be transferred to the Administrative Account; and  
28 amounts withheld as principal and interest shall be transferred to the  
29 Revolving Loan Account.

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31        SECTION 11. All provisions of this Act of a general and permanent  
32 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
33 Code Revision Commission shall incorporate the same in the Code.

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35        SECTION 12. If any provision of this Act or the application thereof to  
36 any person or circumstance is held invalid, such invalidity shall not affect



1 other provisions or applications of this Act which can be given effect without  
2 the invalid provision or application, and to this end the provisions of this  
3 Act are declared to be severable.

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5 SECTION 13. All laws and part of laws in conflict with this Act are  
6 hereby repealed to the extent of such conflict.

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8 SECTION 14. EMERGENCY. It is hereby found and determined by the General  
9 Assembly that there is an immediate need for improvements to water systems in  
10 the state and that the provisions of this act are immediately needed to  
11 provide an additional method of financing such improvements in connection with  
12 federal programs. Therefore, an emergency is hereby declared to exist and  
13 this act being necessary for the preservation of the public peace, health and  
14 safety shall become effective on the date of its approval by the Governor. If  
15 the bill is neither approved nor vetoed by the Governor, it shall become  
16 effective on the expiration of the period of time during which the Governor  
17 may veto the bill. If the bill is vetoed by the Governor and the veto is  
18 overridden, it shall become effective on the date the last house overrides the  
19 veto.

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*/s/Rep. Ferrell, et al*

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APPROVED:3-24-97

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